

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

RANDOLPH GALT, Individually, and as
Trust Manager, etc.,

Plaintiff and Appellant,

v.

WELLS FARGO BANK, N.A., et al.,

Defendants and Respondents.

2d Civil No. B261792
(Super. Ct. No. 1383384)
(Santa Barbara County)

Randolph Galt appeals the trial court's decision that he lacks standing to pursue his financial elder abuse claim against Wells Fargo Bank, N.A.¹ and Cynthia M. Pettit (collectively "respondents"). He claims to have lost half the value of a \$26 million trust during the 2008 financial crisis. He seeks redress from respondents for their management of the trust, alleging they engaged in elder abuse. The Elder Abuse and Dependent Adult Civil Protection Act (Elder Abuse Act) (Welf. & Inst. Code, § 15600 et seq.)² defines "elder" as "any person residing in this state, 65 years of age or older." (§ 15610.27.) Galt does not meet this

¹ Wells Fargo Bank, N.A., (Wells Fargo) was incorrectly sued as Wells Fargo, N.A.

² All statutory references are to the Health & Welfare Code unless otherwise stated.

definition; therefore, he cannot state a claim for relief under the Elder Abuse Act. We affirm.

FACTS AND PROCEDURAL BACKGROUND

Galt, who is 85 years old, resides in Australia and/or Washington State. He is one of the income beneficiaries of a California generation-skipping trust ("the Trust") established by his grandfather. Wells Fargo became trustee of the Trust, including its various subtrusts, in 1990. At that time, each subtrust had its own family member manager. Galt was the life income beneficiary and manager of one such subtrust. Pettit was the Wells Fargo representative responsible for the Trust.

As trustee, Wells Fargo had to invest the Trust's assets in accordance with the managers' written instructions. An agreement among the managers prohibited any single manager from "direct[ing] the Trustee to invest any portion of the Trust Estate other than Approved Investments without first obtaining the prior written consent of a majority of the Managers to such an investment."

In June 2007, Galt informed Wells Fargo that he wished to delegate his investment authority for the subtrust to Sanford C. Bernstein & Co., LLC (Bernstein). Wells Fargo obtained manager approval for the delegation in June 2008 and informed Bernstein that it could "begin trading." Instead, Bernstein advised that it wished to make further changes to the approved investment list, which again required manager consent. By the time consent was received in late 2008, the subtrust's portfolio value had decreased from \$26 million to \$13 million as a result of the national financial collapse.

Galt brought this action for financial elder abuse, breach of fiduciary duty, breach of written contract and breach of the covenant of good faith and fair dealing. He alleged that respondents intentionally refused to follow the June 2007 instruction to allow Bernstein to make all investment decisions for his subtrust and that he consequently suffered substantial damage.

The trial court sustained respondent's demurrer to all but the financial elder abuse claim. It also summarily adjudicated the punitive damages claim in respondents' favor. The parties stipulated to a court trial to address certain legal issues before commencing an estimated six-week jury trial. At that hearing, the court determined that Galt was "not residing in this state," as mandated by section 15610.27, and therefore lacked standing to pursue his financial elder abuse claim. It explained: "The Court is compelled to follow the plain meaning of the statute. If you are not a resident, you are not an elder, and that financial elder abuse statutory claim fails. Based on the undisputed facts of this case, the Court finds that [Galt] was not a resident and thus he has no standing and his claim fails." Galt appeals.

DISCUSSION

Standard of Review

Statutory interpretation presents an issue of law subject to de novo review. (*Honchariw v. County of Stanislaus* (2013) 218 Cal.App.4th 1019, 1026.) We therefore independently resolve the meaning of the section 15610.27 and its application to the undisputed facts. (*Community Youth Athletic Center v. City of National City* (2009) 170 Cal.App.4th 416, 427.)

"In statutory construction, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. [Citation.] 'We begin by examining the statutory language, giving the words their usual and ordinary meaning.' [Citations.] If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations.] If there is ambiguity, however, we may then look to extrinsic sources, including the ostensible objects to be achieved and the legislative history. [Citation.] In such cases, we "'select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.'" [Citation.]" (*Estate of Griswold* (2001) 25 Cal.4th 904, 910-911; *Pulido v. Pereira* (2015) 234 Cal.App.4th 1246, 1251.)

Interpretation and Application of Section 15610.27

The only issue on appeal is whether Galt is prohibited from pursuing a financial elder abuse claim because he does not qualify as an elder. Galt asserts the issue "is blissfully simple yet exasperatingly more elusive in resolution." We disagree. Section 15610.27 defines "elder" as "any person residing in this state, 65 years of age or older." By his own admission, Galt does not reside in this state; consequently, under the plain meaning of the statute, he is not an elder. As we shall explain, Galt's reliance on *Estate of Lowrie* (2004) 118 Cal.App.4th 220 (*Lowrie*), is misplaced.

In 1983 the Legislature enacted former section 9380 to govern elder abuse reporting. The definition of "elder" in that section was "a person 65 years of age or older." (*Id.* subd. (a), added by Stats. 1983, ch. 1273, § 2, as amended by Stats. 1985, ch. 1120, § 1.) The Legislature repealed that statute in 1986 (see Stats. 1986, ch. 769, § 1.3) and concurrently amended section 15610 to address abuse of both elders and dependent adults. The amended statute defined "elder" as "any person *residing in this state*, 65 years of age or older." (Former § 15610, subd. (a), as amended by Stats. 1986, ch. 769, § 6, and repealed by Stats. 1994, ch. 594, § 2; italics added.) That definition, which now appears in section 15610.27 (see Stats. 1994, ch. 594, § 3), was consistent with the pre-existing definition of "dependent adult," i.e., "any person *residing in this state*, between the ages of 18 and 64, who has physical or mental limitations" (Former § 15610, subd. (a), added by Stats. 1985, ch. 1164, §3, as amended by Stats. 1986, ch. 769, § 6, and repealed by Stats. 1994, ch. 594, § 2; italics added; see § 15610.23 [current version].)

Unless the context requires otherwise, the definitions in the Elder Abuse Act govern its construction. (§ 15610.) Since 1986 the Legislature has defined financial elder abuse as the taking of property of a "person residing in this state, 65 years of age or older" with intent to defraud or make a "wrongful" use of his or her property. (§§ 15610.30, subd. (a), 15610.27; *Stebly v. Litton Loan Servicing, LLP* (2011) 202 Cal.App.4th 522, 527; see *Intrieri v. Superior Court*

(2004) 117 Cal.App.4th 72, 82 ["elements of a cause of action under the Elder Abuse Act are statutory"].) Hence, to state a claim for relief, the abused person must be the requisite age and a resident of California. Galt asserts that residency is not required as long as the alleged abuse or abuser has some type of connection to California. He contends that because the Trust is administered in California, section 15610.27 must be liberally construed to encompass his claim. The authorities he cites, however, do not support this theory.

Galt relies heavily upon *Lowrie*, which held that a granddaughter had standing to seek damages for elder abuse of the decedent by her uncle, who was the principal beneficiary of the decedent's trust. (*Lowrie, supra*, 118 Cal.App.4th at p. 227.) It was undisputed the decedent was over 65 and a California resident when she died. (*Id.* at pp. 223-224.) At that time, section 15657.3, subdivision (d) conferred standing to pursue an elder abuse claim on "the personal representative of the decedent, or if none, to the person or persons entitled to succeed to the decedent's estate." (*Lowrie*, at p. 227.) The court broadly construed this language to include the granddaughter, who was the successor beneficiary of the trust. (*Id.* at p. 229.) In the court's view, the granddaughter's "contingent interest" gave her a strong incentive to pursue the action and afforded her standing. (*Id.* at p. 230.) Thereafter, the Legislature amended the statute to clarify, in accordance with *Lowrie*, that upon the death of an elder (or dependent adult), the right to maintain an action passes to the decedent's personal representative or, in the absence of a personal representative, to an intestate heir, the decedent's successor-in-interest or an "interested person" as defined in Probate Code section 48. (§ 15657.3, subd. (d).)

Neither *Lowrie* nor any of the other cases relied upon by Galt discuss the definition of elder in section 15610.27. The cases mainly involve the interpretation and application of section 15647.3, subdivision (d), which delineates the persons who may pursue a claim on a deceased elder or dependent adult's behalf. (E.g., *Lickter v. Lickter* (2011) 189 Cal.App.4th 712, 716 (*Lickter*))

[standing to commence action on behalf of deceased elder]; *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1284 [standing to bring claim on behalf of deceased dependent adult]; see also *In re Estate of Dito* (2011) 198 Cal.App.4th 791, 804-805 [discussing whether widow who allegedly abused her elderly husband is entitled to a portion of his estate].) The question here is more fundamental. It is not whether a person has standing to pursue an abuse claim on behalf of a deceased elder; it is whether an "elder" exists at all.

In defining "elder" in the 1986 amendment, the Legislature could have retained the pre-1986 definition, which omitted the residency requirement. It chose not to do so. Instead, it conformed the definition of "elder" to the pre-existing definition of "dependent adult." (§§ 15610.23, 15610.27; see former § 15610, subd. (a), as amended by Stats. 1986, ch. 769, § 6, and repealed by Stats. 1994, ch. 594, § 2.) That the Legislature chose to harmonize the definitions by requiring California residency for both elders and dependent adults shows that it understood the difference between imposing an age-only requirement and imposing both an age and residency requirement. In other words, in adopting the 1986 amendment, the Legislature "presumably had these [provisions] in mind and intended to change the law." (*Carbone v. Superior Court of Napa County* (1941) 18 Cal.2d 768, 771.) If we were to hold otherwise, we would, in effect, reinstate a definition of "elder" the Legislature purposefully changed nearly 30 years ago and possibly raise questions regarding the interpretation of "dependent adult." That is not our function. We may "not rewrite a statute, either by inserting or omitting language, to make it conform to a presumed intent that is not expressed. [Citations.]" (*Cornette v. Department of Transportation* (2001) 26 Cal.4th 63, 73-74.)

Moreover, as explained in *Lickter, supra*, 189 Cal.App.4th at page 732, "while the decision in *Lowrie* certainly supported a liberal reading of former subdivision (d) of . . . section 15657.3, it is significant that in the wake of *Lowrie*, the Legislature amended the statute . . . with the apparent intent of codifying *Lowrie*. [Citation.] Effectively, the appellate court in *Lowrie* recognized that

[appellant] should have standing to pursue her elder abuse claims against [defendant] because she was an 'interested person' with respect to those claims in that she would become the person entitled to succeed to the estate (and thereby the proceeds of the elder abuse claims) if she prevailed on her claims There is nothing in the Legislature's codification of *Lowrie*, however, to suggest the Legislature intended to sweep even more broadly and grant standing to pursue an elder abuse action to someone who, *contrary to the terms of Probate Code section 48*, has no 'property right in or claim against a trust estate or the estate of a decedent which may be affected by tha[t] proceeding.' [Citation.]" (Italics added.)

Similarly, there is nothing to suggest from the Legislature's codification of *Lowrie* that it intended to broadly confer the right to pursue an elder abuse action on persons who, contrary to the express terms of section 15610.27, do not reside in California. (*Lickter, supra*, 189 Cal.App.4th at p. 732.) Galt argues the definition of "elder" must be liberally construed to promote the Elder Abuse Act's salient goals, but the only way to reach the result he advocates is to ignore the unequivocal statutory requirement that, to qualify as an elder, the person must "reside in this state." (§ 15610.27.) This would be no different than ignoring the requirement that the person be at least 65 years of age. Just as we cannot broadly interpret the statute to encompass persons under age 65, we cannot interpret it to include non-residents. Where, as here, "the words of a statute are reasonably free of ambiguity and uncertainty, we look no further than those words to determine the meaning of that language." (*Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 1503.)

The next question is whether Galt can meet the statutory residency requirement. The Elder Abuse Act does not define the term "residing in the state," but other sections of the Welfare and Institutions Code clarify that the word "residence" means "domicile." For example, to receive county aid and relief to indigents a person must be a resident of the state and county where the application is made. (§ 17100.) Section 17101 defines residence for that purpose as "the place

where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose." The Government Code incorporates the same definition and states "[t]here can only be one residence." (Gov. Code, § 244, subds. (a), (b); see also Elec. Code, § 349, subds. (a), (b) ["residence" means "domicile," i.e., where a person's "habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning"]; *In re Marriage of Thornton* (1982) 135 Cal.App.3d 500, 507 ["It is well settled in California that the term 'residence' as used in [Family Code section 2320, subdivisions (a), (b)(1)], is synonymous with 'domicile'"].)

Here, Galt concedes he lives in Australia and Washington State. Galt has never owned or rented property in California, obtained a California driver's license or registered to vote in this state. His own accountant testified that Galt is a resident of Washington State, and "not a resident of California." As such, he is not subject to California state income taxes. That the Trust has ties to California is irrelevant. Galt cites no statutory or decisional authority suggesting his position as a Trust beneficiary or manager grants him residency status.

In sum, the purpose of the Elder Abuse Act is to redress abuse inflicted on elderly persons who reside in California. (§§ 15610.27, 15610.30; see, e.g., *Bookout v. Nielsen* (2007) 155 Cal.App.4th 1131, 1141 [78-year-old California resident "qualifies for protection as an elder"].) Galt acknowledges in his opening brief that the Legislature enacted the Elder Abuse Act to "*protect[] California's elderly and target[] their abusers.*" Although Galt is elderly, he is not a California resident. As a non-resident, he may not invoke the statutory scheme's protections. To the extent, as Galt claims, this gives respondents an "escape hatch," it is for the Legislature to redress, and not the courts. (See *Cassel v. Superior Court* (2011) 51 Cal.4th 113, 133; *Amis v. Greenberg Traurig, LLP* (2015) 235 Cal.App.4th 331, 339-340.) We have considered all of Galt's arguments and conclude the trial court

properly determined he does not meet the statutory definition of elder. It is axiomatic that without an elder, there can be no claim for financial elder abuse.³

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

³ Galt suggests, in a footnote on page 48 of his opening brief, that to construct section 15610.27 so as to deny protections to non-residents would "likely" violate the equal protection clause of the Fourteenth Amendment. In his reply, Galt acknowledges that because he failed to give notice of this constitutional argument to the Attorney General, the issue is not properly before us. (See Cal. Rules of Court, rule 8.29(b), (c)(1).)

Donna D. Geck, Judge
Superior Court County of Santa Barbara

Grassini, Wrinkle & Johnson, Roland Wrinkle, for Plaintiff and
Appellant.

Fell, Marking, Abkin, Montgomery, Granet & Raney, LLP, Philip W.
Marking, Michael D. Hellman, Gamble T. Parks, for Defendants and Respondents